

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

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|-------------------------|---------------------|
| EPIMENIO CAMPOS, | § |
| Petitioner | § |
| | § |
| v. | § C.A. NO. C-05-039 |
| | § |
| DOUG DRETKE, DIRECTOR, | § |
| TEXAS DEPARTMENT OF | § |
| CRIMINAL JUSTICE - | § |
| INSTITUTIONAL DIVISION, | § |
| Respondent | § |

MEMORANDUM OPINION AND ORDER OF DISMISSAL

On October 19, 2005, the United States Magistrate Judge filed her Memorandum and Recommendation in this cause (D.E. 31). Objections were timely filed (D.E. 34). Having reviewed *de novo* the Magistrate Judge's memorandum and recommendation and the pleadings on file, this Court hereby adopts as its own the findings and conclusions of the Magistrate Judge.

Respondent objects to dismissal of petitioner's claims arguing that *Ex parte Gardner*, 959 S.W.2d 189 (Tex. Crim. App. 1996) acts as a procedural bar to state habeas review. The Court is satisfied that this case is sufficiently distinguishable from *Gardner* to allow for the possibility that the Court of Criminal Appeals will hear petitioner's habeas corpus claims. Accordingly, respondent's motion for summary judgment (D.E. 24) is granted insofar as it seeks dismissal of petitioner's claims for failure to exhaust state court remedies. Petitioner's cause of action for habeas corpus

relief is dismissed without prejudice and petitioner's motion for immediate release is denied (D.E. 27).

ORDERED this 21 day of December, 2005.

Hayden Head
HAYDEN HEAD
CHIEF JUDGE